84-260

No.

Office - Supreme Court, U.S.
FILED
AUG 14 1984
ALEXANDER L. STEVAS
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

FAITH CENTER, A California non-profit church corporation,
Petitioner,
vs.
CITY OF HARTFORD, and TOWN OF AVON
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

BRUCE HENDERSON
(*Counsel of Record*),
HENDERSON AND ESSER,
Attorneys at Law
1615 South Glendale Avenue,
Glendale, California 91205-3395,
(818) 246-8124,

Attorneys for Petitioner,
Faith Center.

Bowne of Los Angeles, Inc., Law Printers. (213) 742-6600.

QUESTIONS PRESENTED*

1. Whether or not Respondents, in subjecting Petitioner to requirements more stringent than those demanded of other religious organizations for statutory tax exempt status, created a denominational preference violating the Establishment Clause.

2. Whether or not Respondents, in arbitrarily denying Petitioner's tax exempt status, created excessive government entanglement with religion violating the Free Exercise Clause.

3. Whether or not the actions of Respondents has given rise to a cause of action under Title 42 U.S.C. §1983 and §1988.

---

*Petitioner alone brings this action, All parties Respondent are named in the caption.

TABLE OF CONTENTS

	Page
Questions Presented	i
Opinions Below	1
Jurisdiction	2
Constitutional Provisions Involved	2
Statement of the Case	2
Reasons for Granting Writ	11
Respondents Subjected Petitioner to Requirements More Stringent than those Applied to Other Religious Organizations. This Action Effected a Denominational Preference of the Sort Consistently and Firmly Denounced by the Decisions of this Court	12
Respondents' Arbitrary Denial of Petitioner's Tax Exempt Status Effects Excessive Governmental Entanglement With Religion	22
The Actions of Respondents Have Violated Petitioner's Rights Under Federal Law Which May Be Remedied by Action Under Title 42 U.S.C. §1983 and §1988	25
Conclusion	28

INDEX TO APPENDICES

Appendix A. Opinion of the Supreme Court of the State of Connecticut.

Appendix B. Decision of the Superior Court for the Hartford/New Britain Judicial District.

Appendix C. Order Extending Time to File Petition for Writ of Certiorari.

Appendix D. Pertinent Constitutional Amendments, and Federal Law Involved.

Appendix E. Connecticut Tax Exemption form M-3.

TABLE OF AUTHORITIES

Cases

	Page
Engel v. Vitale, (1960) 370 U.S. 421	22
Everson v. Board of Education, (1947) 330 U.S. 1	18, 22
Larson v. Valente, (1982) 456 U.S. 228	10, 20, 21, 24, 25
Lemon v. Kurtzman, (1971) 403 U.S. 602	10, 19, 24
Local 42 I.B.E.W. v. Faith Center, (1982) 261 N.L.R.B. #11	27
Maine v. Thiboutot, (1980) 448 U.S. 1	8, 9, 25, 28
Marsh v. Alabama, (1946) 326 U.S. 501	19
Monell v. New York City Dept. of Social Services, (1978) 436 U.S. 658	26
Owen v. City of Independence, (1980) 445 U.S. 622	26
Railway Express Agency v. New York, 336 U.S. 106, 112 (1949)	21
Thomas v. Collins, (1944) 323 U.S. 516	19
Town of Eastford v. Russian Ukranian Evangelical Baptist Union, Inc., 5 C.L.T. #21	12
U.S. v. Lee, (1982) 455 U.S. 252	10, 24
Walz v. Tax Commission of City of New York, (1970) 397 U.S. 664	10, 22, 23, 24
Washington Ethical Society v. District of Columbia, 249 Fed. 2d 127 (D.C. Cir. 1959)	19
Zorach v. Clauson, (1952) 343 U.S. 306	22

Constitution

United States Constitution, First Amendment	2
United States Constitution, Fourteenth Amendment	2, 9

Rules

Rules of the Supreme Court, Rule 17.1(c)	2, 11

Table of Authorities

Statutes

	Page
Connecticut General Statutes §12-81(12)	8, 9, 12
Connecticut General Statutes §12-89	12
Title 19 U.S.C. §1202	27
Title 26 U.S.C. §501(c)(3)	3, 4, 6, 9, 26, 27
Title 28 U.S.C. §1257(3)	2
Title 42 U.S.C. §402(a)(8)(B)	27
Title 42 U.S.C. §602(a)(7)	25
Title 42 U.S.C. §1983	i, 2, 9, 10, 25, 26, 28
Title 42 U.S.C. §1988	i, 10, 25, 26, 28
Title 47 U.S.C. §151	5, 27

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

FAITH CENTER, A California non-profit church corporation,
Petitioner,

vs.

CITY OF HARTFORD, and TOWN OF AVON
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

Petitioner, FAITH CENTER, a California non-profit church corporation, respectfully prays that a Writ of Certiorari issue to review the Decision of the Supreme Court of the State of Connecticut which was released on March 13, 1984. This Decision affirmed the Judgment of the Superior Court of the Hartford/New Britain Judicial District issued on July 28, 1982.

OPINIONS BELOW

The Decision of the Supreme Court of the State of Connecticut is reported as 192 Conn. 434. The Judgment of the Superior Court of the Hartford/New Britain Judicial Dis-

trict is reported as 39 Conn. Sup. 142., 473 A.2d 342. These opinions are attached to this Petition as Appendix "A" and Appendix "B" respectively.

JURISDICTION

The Decision of the Supreme Court of the State of Connecticut was released on March 13, 1984. A timely Motion to Reargue was denied on April 17, 1984. On July 3, 1984, the Honorable Associate Justice Thurgood Marshall extended the time within which to file a Petition for Writ of Certiorari to and including August 14, 1984. A copy of this Order is appended to this Petition as Appendix "C". The Jurisdiction of this Court is invoked under Title 28 U.S.C. §1257(3) and Rules of the Supreme Court Rule 17.1(c) in that a State Court has decided a federal question in a way in conflict with applicable decisions of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendments I and XIV, and Title 42 U.S.C. §1983 which is promulgated under these Amendments. These Amendments, and Title 42 U.S.C. §1983 are printed in full as Appendix "D."

STATEMENT OF THE CASE

Connecticut General Statutes Section 12-81 states in pertinent part:

> "The following-described property shall be exempt from taxation: . . . (12) Personal property of religious organizations devoted to religious or charitable use. Personal property within the state owned by, or held in trust for, a Connecticut religious organization, whether or not incorporated, if the principal or income is used or appropriated for religious or charitable purposes or both;"

Petitioner herein, FAITH CENTER, a California non-profit church corporation, though judicially determined to be a religious organization under the terms of the Statute, (Appendix "B" 473 A.2d 342, 347) was denied tax exempt status on its personal property located in the City of Hartford Connecticut and the Town of Avon, Connecticut. The actions of these two Respondents were upheld by the Trial Court, and the Supreme Court of the State of Connecticut.

The Congregation of Petitioner first assembled under the name "Maple Chapel" in early 1947. On July 2, 1947, Petitioner was incorporated in the State of California as a non-profit church corporation. Petitioner's Constitution and By-Laws specify that it exists: "to provide a Church, and in connection therewith, a suitable and customary organization for the purpose of public worship and religious training."

Adhering to its Constitution, Petitioner maintains three sanctuaries in the State of California, orphanages in Brazil and the Philippines, and a worldwide mission for the spreading of the Gospel of Jesus Christ. At the California sanctuaries, Petitioner conducts regular prayer, worship and teaching services along with all sacerdotal functions normally associated with Protestant Christianity.

In 1949, Petitioner was granted exemption from Federal Taxation under Title 26 U.S.C. §501(c)(3). Both California and Connecticut rely on this federal exemption as proof of Petitioner's *bona fides* as a corporation operated exclusively for religious purposes as its Constitution demands. Petitioner is exempted in both states from Sales and Use Tax, Corporation Tax, and Unemployment Insurance Tax. An official of the Connecticut State Tax Department testified to these State exemptions at trial.

One aspect alone sets Petitioner apart from most other Protestant Churches: it has expanded its Ministry to broadcast the Gospel by the use of radio and television. In 1966, Petitioner's Congregation changed the name of the Church to FAITH CENTER and amended its Constitution to: "provide, establish and maintain radio and television stations for the primary purpose of disseminating the Gospel of Jesus Christ."

By expanding to a Broadcast Ministry, Petitioner sought to use a modern medium to regain an ancient ideal: the Church in the home. In the Christian Faith, "Church" can refer to as few as two people assmbled for worship. The Greek, "Ekklesia" means "assembly" or "body". When together, the people make the Body of Christ. Where distance, illness or other problems prevent the Body from coming together under the same roof, the Broadcast Ministry allows for the spiritual nexus of a great number of persons who would otherwise be denied fellowship and worship.

In 1971, RKO General Corporation donated its Station WHCT-TV, the subject of this litigation, to Petitioner and that Station became part of the Petitioner's Broadcast Ministry. For RKO, the gift was an astute and profitable idea. WHCT-TV had always been a losing proposition, and opportunities for sale were nil. By gifting the Station to a Title 26 U.S.C. § 501(c)(3) exempt organization, RKO obtained a generous tax deduction. It also ridded itself of the Station's debts and contracts by assigning and delegating same to the Petitioner. At the same time RKO gifted its station to the Petitioner, a small local church chose to affiliate itself with Petitioner and became "Faith Center, East." This affiliation gave Petitioner needed Christian contacts in the Hartford area and gave guidance on Christian programming.

The men who then managed the Church saw nothing short of a miracle. They did not forsee the enormous logistical problems involved in operating the Broadcast Ministry of a small Protestant Church in a predominantly Roman Catholic area a continent away from its base of operations. They also failed to foresee the manifold problems engendered by the forced assumption of RKO's contracts.

The unexpired RKO contracts included such programs as "Lassie," "The Lawrence Welk Show," and "Bozo the Clown," and Petitioner was forced to play them or risk a breach of contract action. These programs provided commercial spots which were prerecorded with the program. As with most syndicated shows, one-half of the time allotted comes pre-recorded in the tape. The second half of allotted time is reserved for the local station to insert its commercial spots. Petitioner, because of its Constitution and By-Laws, and because of its tax exempt status could sell none of the allotted time to local advertisers. Public service announcements and messages of inspiration were inserted in the normally valuable local slots, for which Petitioner received no income whatsoever.

This coerced non-religious programming was also thrust on Petitioner from another source: The Federal Communications Commission. Though this agency had granted Petitioner a "Religious" broadcasting license, it was loath to allow a licensee with a totally religious format in an area such as Hartford with few television outlets. Under the rules promulgated under Title 47 U.S.C. § 151, each licensee operates for the "public interest, convenience and necessity," and must include in its broadcast day material relating to agriculture, public affairs, entertainment, news, and children's programs, *inter alia*.

Faced with such regulations as the price of a license, Petitioner hoped that the coerced non-religious programming would help it to meet the F.C.C.'s terms. It also ran local programming such as "Mayor's Forum" at its own expense. The only source of income, remained the religious programming during which Petitioner solicited donations. This income generating time was cut down by the coerced contractual programming and the public service programming which brought Petitioner nothing. It was boxed in, and the box was sealed shut by the Respondents, City of Hartford and Town of Avon.

In 1972, the General Manager of the Station, acting under the erroneous advice of then local counsel, applied to the Tax Assessors of Respondents City of Hartford and Town of Avon for personal property tax exemption under Connecticut General Statute 12-81(12). The application was filed on Tax Exempt form M-3 which on its face excluded all religious organizations from application. Nonetheless, it was the only form available. (A true and correct copy of this form is appended hereto as Appendix "E.") On this erroneously used form, the General Manager stated under oath the fact that all of the income garnered from WHCT-TV was used exclusively for religious purposes. Again, this exclusive use was in conformity with the Church's Constitution and By-Laws, as well as being necessary for the maintenance of the Church's exemption under Title 26 U.S.C. §501(c)(3) and its exemption from California and Connecticut Sales, Use and Unemployment Tax.

Though in possession of the General Manager's sworn statement as to use of the income solely for religious purposes, the Assessors of the Respondents denied Petitioner's applications for personal property tax exemption.

These applications were denied by Respondents' Assessors on the stated grounds that Petitioner's Broadcast

Ministry was "commercial" in nature. The sworn statement of the General Manager, which was and remains uncontroverted, and Petitioner's exempt status granted by the State of Connecticut was ignored. Someone had seen "Lassie," "Lawrence Welk" and "Bozo the Clown" broadcast, and this was to Respondents' minds, conclusive. Petitioner looked different than other religious organizations, employed a different format, and so was subject to a different and capricious standard than other more conventional religious organizations.

This conclusion is not only violative of the First and Fourteenth Amendments, as discussed below, but violative of the simple provisions of Connecticut General Statutes §12-81(12) which looks not to the use of any personal property owned by a religious organization, but to the use of the *income* earned from the personal property. Under the clear language of the Statute, a religious organization could engage in any activity (which did not violate its Constitution and By-Laws) so long as the profit therefrom was used for religious or charitable purposes.

As further discussed below, Respondent's own witnesses established that no other religious organization was required to assume the additional burden of proving its *bona fides* as Petitioner was expected to do. No other religious organization within the Respondents' jurisdiction was punished by denial of tax exempt status for failing to meet Respondents' uncodified, unguided and unconstitutional standards. Indeed, Petitioner was never advised how it was to prove itself. As stated above, the General Manager set forth under oath in 1972 that 1. The Petitioner was a religious organization, and 2. That all income was used for religious purposes. This was done on a form excluding religious organization on its face (See Appendix "E"), and should have been enough.

In 1973, Petitioner's Broadcast Ministry began to collapse because of the great expense and because of mismanagement. Facing bankruptcy in 1975, a new Pastor and a new Board were elected to prevent this seemingly unavoidable end. In March, 1977, acting under orders from the Respondents, the Sheriff of Hartford broke open the door to the Petitioner's transmitter facility located in the Town of Avon, arrested the transmitter operator for trespassing, and turned off all power to the transmitter until the tax bill was paid. At that time, the amount claimed due from Petitioner to Respondents amounted to over one hundred thousand dollars. This action followed.

As set forth in Appendix "B," Petitioner first brought this action in Case No. 14 28 26 returnable on the fourth Tuesday of October, 1977. The action was brought pursuant to C.G.S. §12-119, entitled: "Remedy when property wrongfully assessed" and applied for relief from taxes levied against Petitioner's personal property on the October 1, 1976 Grand List in each of the two named municipalities.

Petitioner later brought a second action against Respondents which was consolidated with the first. In that action, Petitioner sought a declaratory judgment declaring the subject personal property exempt from taxation and that the continued taxation of said personal property was illegal and unconstitutional. Specifically, in the Third and Sixth Counts, Petitioner alleged that the taxation "occasions excessive governmental entanglement with religion in violation of the First Amendment to the United States Constitution, Article I of the Magna Charta, the Preamble to the 1638 Fundamental Orders of Connecticut, and Article I Sections 3 and 20 and Article VII of the Connecticut Constitution."

By Amended Complaint dated June 8, 1981, the Petitioner added two further counts. These alleged that under this Court's recent decision in *Maine v. Thiboutot*, (1980)

448 U.S. 1, Petitioner's status as a religious organization was settled by the granting of exempt status to Petitioner under Title 26 U.S.C. §501(c)(3) by the Federal Government. Petitioner alleged that the acquisition and maintenance of that Federal exemption: "definitively established Plaintiff as a religious organization entitled without qualification to a personal property tax exemption under the precise wording of Section 12-81(12) of the Connecticut General Statutes." Petitioner further alleged therein that the refusal of the Respondents to recognize Petitioner as a religious organization is violative of the Supremacy Clause and the First and Fourteenth Amendments to the United States Constitution. Thus, Petitioner alleged, the actions of Respondents gave rise to an additional cause of action under Title 42 U.S.C. §1983. This Statute provides that anyone who under the color of State Law deprives another of rights, privileges or immunities secured by the Constitution *and laws* of the United States shall be liable to the injured party.

In its Memorandum of Decision (Appendix "B") the Superior Court found that Petitioner was a religious organization, (Appendix "B" 473 A2d 342, 345, 347) but making the same error as the Respondents' Assessors, looked to the alleged use of the personal property rather than to the use of the income as mandated by Connecticut General Statute 12-81(12).

In disposing with Petitioner's claims under the United States Constitution, the Superior Court stated: "From all the evidence submitted, it is concluded that the contention of the defendants is correct and that the plaintiff has failed to sustain its burden of proving that the subject personal property was wrongfully assessed.

"In reaching this conclusion, the court has not overlooked the contentions of the plaintiff that the denial of its claim for exemption deprived it of equal protection of the law

or that requiring it to prove its allegations that the subject property was exempt from taxation involved a constitutional 'excessive governmental entanglement with religion' or that the assessment and collection of the subject taxes unconstitutionally 'discriminates against the free exercise of Plaintiff Church's religious worship.' None of these broad claims has been proved. As the United States Supreme Court observed in the recent case of *U..S v. Lee* (50 U.S.L.W. 4201 (Feb. 23, 1982)) 455 U.S. 71 L.Ed. 2d 102 S.Ct.: 'Not all burdens on religion are unconstitutional,' and 'Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax.' See also *Walz v. Tax Commission of City of New York*, 397 U.S. 664, 674, 25 L.E. 745, 91 S.C. 1049, *Lemon v. Kurtzman*, 403 U.S. 602, 614, 29 L.E. 745, 91 S.C. 2101; *Larson v. Valente*, (50 U.S.L.W. 4411 (April 21, 1982)).... "Quite obviously, in light of the conclusion that the plaintiff has failed to prove that the subject personal property was wrongfully assessed, it follows that the plaintiff has failed to prove any violation of the plaintiff's civil rights as alleged in Counts 7 and 8 in Case 14 28 26 and is clearly not entitled to attorney's fees pursuant to the provisions of Title 42 Section '1983' as claimed, or under Section 1988 to which the Plaintiff probably intended to refer.

"It may well be doubted whether causes of action alleged by plaintiff do in fact give rise to a cause of action which, under the provisions of Title 42 U.S.C. 1983, would entitle the prevailing party in the court's discretion to an award of counsel fees but it is unnecessary to decide that question. Since the plaintiff is not the prevailing party, it is not entitled to any such award and, assuming that the Federal Act is applicable, in the exercise of discretion the respective claims of all counsel to an award of counsel fees

is denied." (Appendix "B" pp. 16-19.) The Decision of the Supreme Court of Connecticut, released March 13, 1984, does not discuss the Petitioner's constitutional issues at all. Referring to the Judgment of the Superior Court, that Court states: "Except for plaintiff's contention that the trial court erred in not considering one of its claims, and the cross appeal, both of which we discuss below, that decision so completely articulates the issues involved in this appeal and so adequately explains the legal basis for its conclusions that it may appropriately be referred to for a detailed discussion of the facts and the applicable law. To incorporate that decision herein would be redundant." (192 Conn 434, 436.)

Not one sentence in the Opinions of either Court dealt with the Petitioner's main constitutional issue: the discrimination among religions which has patently occurred in this Case. Thus must Petitioner seek its relief in this Court.

REASONS FOR GRANTING THE WRIT

Petitioner respectfully requests that this Court review the decision of the Supreme Court of the State of Connecticut on the grounds set forth in Rule 17.1(c) Rules of the Supreme Court, viz. that a State Court has decided a federal question in a way in conflict with applicable decisions of this court.

RESPONDENTS SUBJECTED PETITIONER TO REQUIREMENTS MORE STRINGENT THAN THOSE APPLIED TO OTHER RELIGIOUS ORGANIZATIONS. THIS ACTION EFFECTED A DENOMINATIONAL PREFERENCE OF THE SORT CONSISTENTLY AND FIRMLY DENOUNCED BY THE DECISIONS OF THIS COURT.

The statutory intent of Connecticut General Statutes §12-81(12) is easily ascertained from its face. It is straightforward and self-contained. As stated in a recent Connecticut case, *Town of Eastford v. Russian Ukranian Evangelical Baptist Union, Inc.*, (1979) 5 C.L.T. No. 21:

> "Conn. Gen. Stat. §12-81 is divided into 62 numbered sub-sections each of which establishes an exemption for a separate and distinct category of property. Each of the sub-sections is complete within itself. Some sub-section include filing requirements while others do not."

In addition to exemptions for personal property owned by religious organizations, the Section also exempts, *inter alia*, houses of worship, clergy's dwellings, nursery products, carriages, wagons, solar energy systems and vanpool vehicles in its now sixty-six subsections. Constitutionally protected, charitable and whimsical, each of these provides standards and exceptions commensurate with its importance. As stated above in this Petition, Sub-section 12 is limited only by the use of income garnered from the personal property.

Augmenting the provisions of C.G.S. §12-81(12) is C.G.S. §12-89 which states in pertinent part:

> "The board of assessors of each town . . . shall inspect the statements filed with it and required by sections 12-81 and 12-87 from scientific, educational, literary,

historical, charitable, agricultural and cemetary organizations, shall determine what part, if any, of the property claimed to be exempt by the organization shall in fact be exempt and shall place a valuation upon all such property, if any, as is found to be taxable, . . ."

Conspicuously absent from this Section is any reference to the property described in Sub-section 12; the language in fact carefully steers around all such property. Indeed, for other religious organizations under Respondents' control, no reporting or filing of any kind is required. Petitioner, however, was capriciously singled out for discriminatory treatment.

At the trial of this matter before the Superior Court, Mr. Clifton Clark, the Tax Assessor of Respondent Town of Avon, presented the following testimony:

"Q. Do you have religious organizations in the Town of Avon to which you would grant personal property exemptions?

A. Yes.

Q. Have you required any applications from these organizations in order to obtain that exemption?

A. If you are referring to the normal tax application, the answer is no.

Q. There was no application of any kind that was required of any religious organization in order to get a tax exemption?

A. That is correct.

Q. Did you require any of these other religious organizations to file any financial statements with you?

A. No.

Q. Why not?

A. Because it was not required.

Q. The General Statutes do not require application from a religious organization?

A. No." (Transcript pp. 41-43.)

Mr. John McDermott, Tax Assessor of Respondent City of Hartford also testified as follows:

"Q. Does the City of Hartford require religious organizations to file tax exempt applications under Conn. Gen. Stat. 12-81(12)?

A. No, we do not.

Q. Why not?

A. Because they are not required under State Statute.

Q. Has the City of Hartford denied status, a tax exempt status, under 12-81(12) to the Plaintiff?

A. In 1976 no application was made to us in any form for such tax exemption. So, therefore there was no denial.

Q. However, you just said religious organizations are not required to file such applications, did you not?

A. That's correct.

Q. So why did you assume that Faith Center would have to file one?

A. I had no knowledge of Faith Center as a religious organization.

Q. What would it take to give you that knowledge?

A. Evidence from Faith Center that in fact it was a religious organization." (Transcript pp. 95-97.)

Later in the same testimony, it was admitted:

> "Q. However, you do not claim, do you that you can require religious organizations to provide financial data, a financial statement as to where their income comes from and where their expenses go?
>
> A. Well, it is a kind of Catch-22 in that, if you will." (Transcript pp. 114-115.)

Later, at Transcript pp. 123-124:

> "A. Once an organization has in fact proven and been granted a tax exempt status under §12-81, sub-section 12, a religious organization, then I believe, we do not have the right under the statute to require you to file, you know, an annual affidavit, or even a quadrennial affidavit in that case. That's what the statute says, once you are a religious organization, we cannot require you to do so....
>
> A. You are not required to file the appropriate forms, but, up until that time, somewhere along the line, in my opinion, the taxpayer has to prove that they are in fact a religious organization like any other section of the statute."

On page 127 of the Transcript, the full extent of the Respondents' totally discriminatory caprice is clearly set forth:

> "Q. Is it your claim ... that you see no differentiation between the rights of a religious organization as to other charitable organizations spelled out in 12-89?
>
> A. No. I said once a determination has been made by our officials that we in fact know and granted an exempt status for a religious organization under §12-81, sub-section 12, then, and only then, since we know

it as a religious organization we have to comply with the statutes, and we cannot, you know, there is no requirement for them to file an affidavit with us."

Yet, Respondents' own exhibit shows that Petitioner did file such an affidavit. Even this extra burden imposed on Petitioner failed to satisfy Respondents, and perhaps nothing could; no guidelines exist. As Mr. Richard Wandy, Assistant Assessor of Respondent City of Hartford testified:

"Q. Do you have one definition that you referred to in the course of your business or in the course of your duties, a statute or a primary guideline or something that you refer to (in determining what is "religious")?

A. No." Transcript p. 279.

At the trial level, both Respondents admitted Petitioner was a religious organization, and this fact was judicially determined. (Appendix "B" 473 A2d 342, 345). Respondents' own exhibit, the Affidavit of the General Manager on form M-3 (see Appendix "E.") states that Petitioner is a Church and all sums garnered are applied to religious purposes as mandated by Petitioner's Constitution. Yet, though the testimony shows that this amount of information would satisfy as to other religious organizations, it was not enough in the case of Petitioner. What was required was and remains an unknown based only on the whim of Respondents' Assessors. No forms, procedures or remedies existed save this action under C.G.S. §12-119.

At the Trial Court, the same discriminatory "Catch 22" was manifest. As the Superior Court stated:

"In connection with this allegation (That Petitioner met the requirements C.G.S. §12-81(12).) it should be noted that at no time from 1972 through the close

> of the trial did the plaintiff submit to the assessors of the defendant municipalities or to the court any evidence whatsoever concerning the financial operations of Channel 18 (WHCT-TV) or how the income from that operation was used or appropriated."
>
> 473 A.2d 342, 347

For Petitioner, the situation is a paradox: In the State of Connecticut, 12-81(12) grants religious organizations tax exempt status of their personal property without the need to file any application with local tax officials. However, unless the Assessor believes that the religious organization is a religious organization, an application must be filed to prove that it is, in fact, a religious organization. The Courts agree with this proposition, for in spite of the fact that Petitioner has been judicially determined to be a religious organization, it did not prove that it was a religious organization so it is not entitled to tax exemption. Even this conundrum would be more acceptable, and perhaps constitutionally permissible, if it were applied to all religious organizations evenhandedly. It was not. In Interrogatories directed to the Respondent Town of Avon (July 29, 1981), that Respondent admitted that the Roman Catholic Church has never been required to file any application forms or submit financial data in order to obtain exempt status on that organization's personal property. Petitioner can draw no other conclusion from its experience than to observe that if an organization fits into Respondents' Assessors concept of what a church should be, its tax exempt status under 12-81(12) is established *eo instante* with no need for any troublesome applications or submission of fiscal data. If that organization dares to appear other than what that assessor believes to be a church, its tax exempt status can be denied. There are no fixed standards, only whim which could conceivably be

different for each and every city and town in the State. The whim establishes favored religions. It is repugnant to the Constitution of the United States. In *Everson v. Board of Education*, (1947) 330 U.S. 1, this Court said:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State'."
>
> — 330 U.S. 1, 15-16

In the Memorandum of Decision of the Superior Court, the Court states:

> "It is a settled rule of law that statutes which exempt from taxation are to be strictly construed against the party claiming an exemption." (Citations omitted.) "Exemptions, no matter how meritorious, are of grace,

> and must be strictly construed. They embrace only what is strictly within their terms." (Appendix "B")
>
> 473 A.2d 342, 348

This restatement may well be true in regard to those organizations exempted under C.G.S. § 12-81 which do not come within the aegis of First Amendment protection. When religious freedom is involved, the standard is considerably different:

> "[A] considerable burden is on the state, in questioning a claim of a religious nature. Strict or narrow construction of a statutory exemption for religious organizations is not favored." *Washington Ethical Society v. District of Columbia*, 249 F. 2d 127, 129, (D.C. Cir. 1959, Burger, J.).

The reason for the difference in standards is simply that the freedoms of speech, assembly and religion granted to citizens by the First Amendment have been recognized as having a preferred position in the constellation of our rights and liberties. (See *Thomas v. Collins*, (1944) 323 U.S. 516, *Marsh v. Alabama*, (1946) 326 U.S. 501.) Further, tax exemption for churches represents: "...more than 200 years of virtually universal practice imbedded in our colonial experience and continuing into the present." *Lemon v. Kurtzman*, (1971) 403 U.S. 602, 624.

This essential distinction between groups exempted by operation of state-bestowed "grace" and groups exempted by the First Amendment was ignored or missed by the Trial Court. Nowhere in that Decision does that Court accept in its own mind that Petitioner is a church entitled to the same rights and privileges as the Roman Catholic Church or the Church of England. Though compelled to admit that Petitioner is a religious organization, the language of the Memorandum reflects that the

Court views it as an inferior specie of church — a second-class church — which should be happy with any leavings the State might throw its way. It creates and endorses denominational preference.

It is an immutable facet of human nature to regard one's own beliefs as superior to the differing beliefs of others. Any novel belief, or as in this Case, any novel presentation of a traditional faith, is sure to be met with hostility, incredulity or violence. What the First Amendment utterly forbids, however, is government sanctioned preference of the more traditional religions over the newcomers.

In *Larson v. Valente* (1982), 456 U.S. 228, this Court stated:

> "'This constitutional prohibition of denominational preference is inextricably connected with the continuing vitality of the Free Exercise Clause. Madison once noted that 'Security for civil rights must be the same as that for religious rights; it consists in the one case in a multiplicity of interests and in the other in multiplicity of sects.' Madison's vision — freedom for all religion being guaranteed by free competition between religions — naturally assumed that every denomination would be equally at liberty to exercise and propagate its beliefs. But such equality would be impossible in an atmosphere of official denominational preference. Free exercise thus can be guaranteed only when legislators — and voters — are required to accord to their own religions the very same treatment given to small, new, or unpopular denominations. As Justice Jackson noted in another context, 'there is no more effective practical guaranty against arbitrary and unreasonable

> government than to require that the principles of law which officials would impose upon a minority must be imposed generally.' *Railway Express Agency v. New York*, 336 U.S. 106, 112 (1949) (Jackson, J., concurring)." 456 U.S. 228, 245-246.

The factual situation in *Larson* must be compared to this instant Case. In *Larson*, a state statute was declared violative of the Establishment Clause because it granted certain denominations preference over others. In this Case, the Connecticut Statute appears on its face fair enough; it grants personal property tax exemption equally to all religious organizations. Only in application has it become violative of the First Amendment. Only when the local assessors are permitted their capricious power to grant or deny its application on their personal whim does it stand opposed to the Establishment Clause.

As the "Moonies" were to the Minnesota legislature, so Faith Center is to Respondents: something new, different and vaguely threatening. Faith Center presented the Gospel over the airwaves along with programs such as "Lassie," "Lawrence Welk" and "Bozo" which it was forced to present and from which it received no income.

The record shows Petitioner met all criteria necessary for personal property tax exemption under C.G.S. §12-81(12). It is as entitled to enjoy the benefits of that Statute as any other religious organization in the State. By refusing to countenance those rights, Respondents have effected a denominational preference of the sort consistently and firmly depreciated by the decisions of this Court.

RESPONDENTS' ARBITRARY DENIAL OF PETITIONER'S TAX EXEMPT STATUS EFFECTS EXCESSIVE GOVERNMENTAL ENTANGLEMENT WITH RELIGION.

As stated in the argument above, the denominational preference effected by the Respondents herein makes the prime reason for the granting of this Writ the violation of the Establishment Clause. However, as often stated in the precedents of this Court, the Establishment Clause and the Free Exercise Clause are but the boundary markers of the same ideal: freedom of religious belief. It is axiomatic that the establishment of one religion by a government chills the free exercise of others forced to compete unequally with it. (See *Everson v. Board of Education, supra, Zorach v. Clauson,* (1952) 343 U.S. 306, *Engel v. Vitale,* (1962) 370 U.S. 421.)

The actions of the Respondents in subjecting Petitioner to standards more burdensome than applied to other religious organizations also violated the Free Exercise Clause.

In *Walz v. Tax Commission of City of New York,* (1970) 397 U.S. 664, this Court upheld an equally-applied tax exemption statute saying:

> "The legislative purpose of a property tax exemption is neither the advancement nor the inhibition of religion; it is neither sponsorship nor hostility.... It has not singled out one particular church or religious group or even churches as such; rather, it has granted exemption to all houses of religious worship within a broad class of property owned by non-profit, quasi-public corporations which include hospitals, libraries, playgrounds, scientific, professional, historical and patriotic groups." 397 U.S. 664, 672-673.

Later in *Walz*, this Court addressed the issue of whether exemption or taxation would cause the greater danger:

> "The test is inescapably one of degree. Either course, taxation of churches or exemption, occasions some degree of involvement with religion. Elimination of exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes." 397 U.S. 664, 675.

Every government entanglement with religion denounced in this paragraph of *Walz* has been suffered by the Petitioner. It has endured over-valuation of its would-be exempt personal property, tax liens, and the physical dispossession of its buildings by Sheriffs under orders from Respondents. Its employees have been taken to jail on charges of trespass upon Petitioner's own property, and the power for its transmitter, along with power for the tower lights, were forceably interrupted until the taxes were paid.

The entanglement is a continuing one. The Superior Court complains that Petitioner never made its financial statement available to Respondents. If such inspection were permissible under the C.G.S. §12-81(12), would it need be done every year? Every six months, at the pleasure and convenience of Respondents' Assessors? With no standards, it is anyone's guess and everyone's fear.

Yet, the Courts of Connecticut have endorsed Respondents' actions in violation of the considerations of *Walz*, and cited decisions of this Court to support their error.

> "In reaching this conclusion, the court has not overlooked the contentions of the plaintiff that the denial

> of its claim for exemption deprived it of equal protection of the law or that requiring it to prove its allegations that the subject property was exempt from taxation involved a constitutionally "excessive governmental entanglement with religion or that the assessment and collection of the subject taxes unconstitutionally "discriminates against the free exercise of the plaintiff Church's religious worship." None of these broad claims has been proved. As the United States Supreme Court observed in the recent case of *United States v. Lee,* 455 U.S. 252, 257, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982): "Not all burdens on religion are unconstitutional." That court further stated (p. 260, 102 S.Ct. p. 1056): "Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax." See also *Larson v. Valente,* 456 U.S. 228, 102 S.Ct. 1673, 72 L.Ed.2d 33, reh. denied, 457 U.S. 1111, 102 S.Ct. 2916, 73 L.Ed.2d 1323 (1982); *Lemon v. Kurtzman,* 403 U.S. 602, 614, 91 S.Ct. 2105, 29 L.Ed.2d 745, reh. denied, 404 U.S. 876, 92 S.Ct. 24, 30 L.Ed.2d 123 (1971); *Walz v. Tax Commission of City of New York,* 397 U.S. 664, 674, 90 S.Ct. 1409, 1414, 25 L.Ed.2d 697 (1970)." 473 A.2d 342, 348-349

Again, the Court fails or refuses to recognize the denominational preference clearly admitted in testimony before it. Had all religious organizations in Respondents' jurisdiction been subject to the same standards and burdens, *United States v. Lee,* (1982) 455 U.S. 252 might well be applicable. *Lee,* however, involved the application of standards set forth in a statute applied evenhandedly to all religious organizations. The statute in *Lee* further involved a compelling federal interest which justified the evenly distributed burden. This Court even suggested in

Larson, supra, that the Minnesota Statute there found unconstitutional might be permissible if evenhandedly applied (*Larson*, supra 456 U.S. 228, 253.)

In this Case, evenhandedness does not exist and no compelling state interest argument is even made by the Respondents in support of their capricious actions. Respondents would not entangle themselves with all religions, only those, like Petitioner, which they find different and offensive. Official dislike of unestablished Faiths was the genesis of many evils which the First Amendment to the Constitution sought to prevent. The actions of Respondents, and the Decisions of the Connecticut Courts are repugnant to that Constitution.

THE ACTIONS OF RESPONDENTS HAVE VIOLATED PETITIONER'S RIGHTS UNDER FEDERAL LAW WHICH MAY BE REMEDIED BY ACTION UNDER TITLE 42 U.S.C. § 1983 & § 1988.

In *Maine v. Thiboutot*, (1980) 488 U.S. 1, this Court adjudicated a claim that a state's violation of rights guaranteed under the Social Security Act (Title 42 U.S.C. § 602(a)(7) gave rise to a cause of action for violation of civil rights under the Civil Rights Act (Title 42 U.S.C. § 1983 and § 1988).

The question presented to this Court was whether or not the phrase, "and laws" as used in § 1983 meant all federal laws, or whether the language should be limited to the Constitution and some sub-set of laws.

This Court held that the clear language of the Statute, and the previous interpretations by this Court, showed that the Civil Rights Act broadly encompassed violations of federal statutory law as well as violations of constitutional law.

> " 'There can be no doubt that § 1 of the Civil Rights Act [of 1891] was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights.' "
>
> (448 U.S. 1, 5. [quoting from *Monell v. New York City Dept. of Social Services,* (1978) 436 U.S. 658, 700-701.]

These broad remedies were further expanded by the holding in *Owen v. City of Independence,* (1980) 445 U.S. 622 that the common-law immunity for discretionary functions provides no basis for according municipalities a good-faith immunity under § 1983.

Because the Social Security Act provides no penal or remedial action against a person or municipality who acting under color of state statute deprived a citizen of federally secured rights, this Court held that Title 42 U.S.C. § 1983 and 1988 supply the exclusive cause of action available for vindication of those violations.

At the trial of this matter, evidence was introduced by Mr. Kerrigan of the Connecticut State Tax Department to the effect that Petitioner's corporation business tax exemption under Connecticut General Statute 12-214 was based upon Petitioner's exemption under Title 26 U.S.C. § 501(c)(3) issued to Petitioner as an individual church corporation by the Los Angeles District Director of the I.R.S. This state employee specifically noted and accepted Petitioner's I.R.S. exemption. Upon this exemption, the Connecticut State Tax Department relied exclusively in exempting Petitioner from corporate tax return filings.

It is a matter of common knowledge that the grant of an Exemption under Title 26 U.S.C. § 501(c)(3) is a most difficult status to obtain. The application form is over ten pages long, and inquires exhaustively into all aspects of an applicant's operation.

As testimony at the trial showed, without contravention, Petitioner had been granted status under Title 26 U.S.C. § 501(c)(3) for over thirty years. That status had never been questioned, and upon its strength alone, both California and Connecticut had exempted Petitioner from sales, use, corporate, and unemployment insurance tax. The situation becomes an exercise in madness. The federal government accepts Petitioner's status as a Church and grants it an exemption from taxation. The state governments accept Petitioner's status as a Church and grant it an exemption from taxation. The Respondents, however, at the lowest level of government, deny Petitioner's status granted by the federal and state governments and would force Petitioner to prove itself to them on their own unspecified terms.

As a Church, Petitioner is endowed with other rights under federal law. Evidence was introduced at trial showing that in *Local 42 I.B.E.W. v. Faith Center,* (1982) 261 N.L.R.B. #11, the National Labor Relations Board found Petitioner exempt from the provisions of the N.L.R.A. The Board found that the Church's Broadcast Ministry was "an extension of its pulpit."

Evidence was also offered at trial that the fatal showing of "Lawrence Welk," "Lassie" and "Bozo the Clown" was inserted so as to be in conformity with F.C.C. regulations promulgated under Title 47 U.S.C. §151.

The rights bestowed on religious organizations by the federal government because of the special status of religious freedom under the First Amendment are manifold. In addition to the federal rights discussed in detail above, Petitioner is further granted exemption from Customs Duties under Title 19 U.S.C. § 1202 (Schedule 8 part 4), and an exemption from payment into the Social Security System under Title 42 U.S.C. § 402(a)(8)(B).

This Court in *Maine v. Thiboutot, supra,* noted that although the Social Security Act provided no penal provisions for persons who had arrogated rights of citizens granted thereunder, Title 42 U.S.C. § 1983 and § 1988 supplied a cause of action.

Basing their claims on the language of *Maine,* Petitioner amended its Complaint against the Respondents to include counts for the denial of its rights granted under federal statutory law as well as those granted by the Constitution. Like § 1983 itself, the language of this Court in that case is clear and precise. Respondents, under color of state law deprived Petitioner of rights secured by federal law. It was error for the Connecticut Courts, subject to the language in *Maine,* to fail to grant redress.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that a Writ of Certiorari issue from this Court to review the Decision of the Supreme Court to the State of Connecticut.

Respectfully submitted,

BRUCE HENDERSON,
(Counsel of Record),
HENDERSON AND ESSER,

Attorneys for Petitioner,
Faith Center.

APPENDIX A

Opinion of the Supreme Court of the State of Connecticut

FAITH CENTER, INC.

v.

CITY OF HARTFORD ET AL.

(11588)

(11589)

SPEZIALE, C. J., HEALEY, PARSKEY, GRILLO and MENT, Js.

The plaintiff F Co., a religious organization, in seeking, inter alia, statutory (§ 12-119) tax relief against the defendants, the city of Hartford and the town of Avon, claimed that its personal property located in those municipalities was exempt from taxation and that it had been wrongfully assessed on their 1976 lists. F Co. further claimed, under federal statute (42 U.S.C. § 1983), a violation of its civil rights, in response to which Avon filed a claim for an award of counsel fees. The referee whom the matter was assigned found that F Co. had failed to sustain its burden of proving that its property had been wrongfully assessed or that it had been deprived of its civil rights. The referee also denied Avon's claim for counsel fees. On F Co.'s appeal and Avon's cross appeal, *held:*

1. Since, in an action under § 12-119, the taxpayer has the burden of proving an exemption from property taxes, the referee did not err in not addressing F Co.'s claim that religious organizations are not included among those required, by statute (§ 12-89), to file a statement with local tax assessors claiming exemption, that issue having no evidential significance in a § 12-119 proceeding.

2. Under the circumstances here, the referee properly denied Avon's claim for counsel fees.

F Co.'s remaining claims were adequately and properly disposed of in the referee's memorandum of decision.

Argued January 12 — decision released March 13, 1984

Action for relief from taxes levied against personal property of the plaintiff on the grand list of the defendant municipalities, and action for a declaratory judgment determining that property to be tax exempt and its continued or prospective taxation to be illegal and unconstitutional, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford, consolidated for trial, and referred to *Hon. Charles S. House,* state referee; judgments for the defendants from which the plaintiff appealed and the defendant town of Avon cross appealed to this court. *No error.*

Gordon T. Allen, for the appellant-appellee (plaintiff).

Richard M. Cosgrove, deputy corporation counsel, with whom, on the brief, was *Richard H. Goldstein,* corporation counsel, for the appellee (named defendant).

Austin Carey, Jr., for the appellee-appellant (defendant town of Avon).

Per Curiam. This is an appeal[1] by the plaintiff, a religious organization, from a judgment for the defendants city of Hartford and town of Avon. The plaintiff brought an action in several counts, pursuant to General Statutes §12-119, claiming that its personal property located in the respective city and town was exempt from taxation and had been wrongfully assessed on the lists of October 1, 1976. It later amended its complaint by including an additional count against each defendant alleging a violation of civil rights and claiming relief pursuant to 42 U.S.C. §1983. The trial court found that the plaintiff had failed to sustain

---

[1]The plaintiff filed two actions against the defendants, one seeking a declaratory judgment and the other seeking an order to remove the plaintiff's property from the tax lists. These actions were consolidated at trial.

its burden of proving that its property was wrongfully assessed or that it had been deprived of its civil rights under the federal statute.

In response to the plaintiff's claim for relief under §1983 Avon filed a claim for an award of counsel fees pursuant to 42 U.S.C. §1988. The trial court, in its discretion, denied the town's claim and the town has filed a cross appeal.

The trial court filed an extensive memorandum of decision, *Faith Center, Inc.* v. *Hartford,* 39 Conn. Sup. 142, A. 2d (1982), in which it discussed both the factual and legal issues involved in the plaintiff's claims for relief. After examining the record on appeal and after considering the briefs of the parties and their arguments, we conclude that there is no error in the judgment from which the appeals were taken and that the memorandum of decision filed by the trial court adequately and properly disposes of the contentions of the parties before us. Except for the plaintiff's contention that the trial court erred in not considering one of its claims and the cross appeal, both of which we discuss below, that decision so completely articulates the issues involved in this appeal and so adequately explains the legal basis for its conclusions that it may appropriately be referred to for a detailed discussion of the facts and the applicable law. To incorporate that discussion herein would be redundant.

The plaintiff assigns error respecting the failure of the trial court to address its claim of law that under General Statutes §12-89[2] religious institutions are not included

---

[2]"[General Statutes] Sec. 12-89. ASSESSORS TO DETERMINE EXEMPTIONS. The board of assessors of each town, consolidated town and city or consolidated town and borough shall inspect the statements filed with it and required by sections 12-81 and 12-87 from scientific, educational, literary, historical, charitable, agricultural and cemetery organizations, shall determine what part, if any, of the property claimed to be exempt by the organization shall be

among those required to file with the local assessor a statement claiming an exemption from the property tax. Section 12-89 was inapplicable to the proceeding before the trial court and it therefore quite properly disregarded it. In actions brought pursuant to §12-119[3] the question before

---

in fact exempt and shall place a valuation upon all such property, if any, as is found to be taxable, provided any property acquired between assessment dates by any tax-exempt organization shall first become exempt on the tax list next succeeding the date of acquisition. Any organization filing a tax exempt statement, aggrieved at the action of the board of assessors, may appeal, within the time prescribed by law for such appeals, to the board of tax review. Any such organization claiming to be aggrieved by the action of the board of tax review may, within two months from the time of such action, make application in the nature of an appeal therefrom to the superior court for the judicial district in which such town, city or borough is situated."

[3]"[General Statutes] Sec. 12-119. REMEDY WHEN PROPERTY WRONGFULLY ASSESSED. When it is claimed that a tax has been laid on property not taxable in the town or city in whose tax list such property was set, or that a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof or any lessee thereof whose lease has been recorded as provided in section 47-19 and who is bound under the terms of his lease to pay real property taxes, prior to the payment of such tax, may, in addition to the other remedies provided by law, make application for relief to the superior court for the judicial district in which such town or city is situated. Such application may be made within one year from the date as of which the property was last evaluated for purposes of taxation and shall be served and returned in the same manner as is required in the case of a summons in a civil action, and the pendency of such application shall not suspend action upon the tax against the applicant. In all such actions, the superior court shall have power to grant such relief upon such terms and in such manner and form as to justice and equity appertains, and costs may be taxed at the discretion of the court. If such assessment is reduced by said court, the applicant shall be reimbursed by the town or city for any overpayment of taxes in accordance with the judgment of said court."

the court is whether the town has levied an illegal tax. *E. Ingraham Co.* v. *Bristol,* 146 Conn. 403, 407, 151 A.2d 700, cert. denied, 361 U.S. 929, 80 S. Ct. 367, 4 L. Ed. 2d 352 (1959). Levying a tax on property exempt from taxation would be an illegal exaction. See *Crescent Beach Assn.* v. *East Lyme,* 170 Conn. 66, 363 A.2d 1045 (1976). The burden of proving that it is exempt from taxation rests on the taxpayer. *Moaugno* v. *Tax Commissioner,* 174 Conn. 419, 422, 389 A.2d 745 (1978). In an action brought under §12-119 that burden would have to be satisfied before the trial court. Whether or not the taxpayer was required to claim his exemption before the assessor would have no evidential significance in the §12-119 proceeding.

On the cross appeal, Avon claims that since the plaintiff amended its complaint to include an alleged violation by Avon of 42 U.S.C. §1983 (count eight) Avon, as the prevailing party, is entitled to attorney's fees under 42 U.S.C. §1988. We do not agree.

Section 1988 provides in relevant part: "In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." Though the primary purpose of this provision is to provide plaintiffs with the incentive to sue to protect their civil rights; see *Newman v. Piggie Park Enterprises,* 390 U.S. 400, 88 S. Ct. 964, 19 L. Ed. 2d 1263 (1968); in certain circumstances, a prevailing defendant may recover attorney's fees. "'[A] plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so.' [*Christiansburg Garment Co. v. EEOC*], 434 U.S. [412], 422, 98 S. Ct. [694, 54 L. Ed. 2d 648 (1978)]." *Hughes* v. *Rowe,* 449 U.S. 5, 7, 101 S. Ct. 173, 66 L. Ed. 2d 163 (1980).

APPENDIX B

Decision of the Superior Court for the Hartford/New Britain Judicial District

39 Conn.Sup. 142

FAITH CENTER, INC.

v.

CITY OF HARTFORD et al.

Nos. 142826, 216493.

Superior Court of Connecticut,
Judicial District of Hartford-New Britain.

July 29, 1982.

Taxpayer brought actions against two cities for recovery of allegedly wrongfully assessed personal property taxes and for declaratory judgment that its personal property was tax exempt. The Superior Court, Hartford-New Britain at Hartford, consolidated actions and referred them to state trial referee for hearing and judgment. Charles S. House, State Referee, held that taxpayer, conceded to be religious organization, failed to establish that assessment on its radio station was on property exempt from taxation.

Judgment for cities.

No error found, Conn., ____ A.2d ____.

1. Taxation — 251

Taxpayer, which was conceded to be religious organization, failed to prove that principal or income of its radio station was used or appropriated for no other than religious purpose for purpose of determining its exemption from personal property taxes. C.G.S.A. Const. Art. 1, §§3, 20; C.G.S.A. §12-81(12).

2. Taxation — 251

In challenge to personal property tax assessment, taxpayer, which was conceded to be religious organization,

failed to establish that alleged grant of tax-exempt status by federal government was ever made or maintained. 26 U.S.C.A. §501(c)(3) et seq.

3. Taxation — 244

Even if taxpayer established that it was granted exempt status under Internal Revenue Code, any exemption resulting from such grant would not be "without qualification" for purpose of exemption from state personal property tax, since state exemption is subject to qualification that principal or income from property be used or appropriated for religious or charitable purposes or both. 26 U.S.C.A. §501(c)(3) et seq.; O.C.G.A. §12-81(12).

4. Taxation — 251

Burden of proving entitlement to claimed tax exemption rests upon party claiming exemption.

5. Taxation — 251

Taxpayer, which was concededly religious organization, failed to establish that its radio station's "principal or income is used or appropriated for religious or charitable purposes or both," and thus, failed to establish that station was entitled to exemption from personal property taxes for year in which it contended that it was wrongfully assessed. C.G.S.A. §12-81(12).

6. Constitutional Law — 84.5(8)
Taxation — 251

Taxpayer, which was concededly religious organization, failed to establish claims that denial of its claim for exemption from personal property taxes deprived it of equal protection of law, or that requiring it to prove its allegations that its radio station was exempt from taxation involved constitutionally excessive governmental entanglement with religion, or that assessment and collection of

subject taxes unconstitutionally discriminated against free exercise of its church's religious worship. C.G.S.A. Const. Art. 1, §§3, 20; C.G.S.A. §12-81(12); U.S.C.A. Const. Amends. 1, 14.

7. Declaratory Judgment — 216

Taxpayer, which was concededly religious organization, was not entitled to declaratory judgment with respect to continued or prospective personal property tax assessments on its radio station, where taxpayer failed to prove that radio station was wrongfully assessed in challenged year, where same factual situation could not be assumed to exist at time of subsequent tax lists, and where taxpayer had adequate remedies available if its property were wrongfully assessed in other tax years. C.G.S.A. §§12-81(12), 12-111, 12-118, 12-119.

8. Civil Rights — 13.17(13)

Taxpayer, which concededly was religious organization but failed to prove that its radio station was wrongfully assessed for personal property taxes, failed to prove any violation of its civil rights, and thus, was not entitled to attorney fees. 42 U.S.C.A. §§1983, 1988.

Gordon T. Allen, Wethersfield, for plaintiff.

Richard M. Cosgrove, Asst. Corp. Counsel, Hartford, for defendant (city of Hartford).

Hoppin, Carey & Powell, Hartford, for defendant (town of Avon).

CHARLES S. HOUSE, State Referee.

In the first case, the plaintiff brought an action against the city of Hartford and the town of Avon by writ, summons and complaint returnable to the Court of Common Pleas on the fourth Tuesday of October, 1977. The action was brought pursuant to the provisions of General Statutes §12-119 entitled "Remedy when property wrongfully asses-

sed" and applied for relief from taxes levied against personal property of the plaintiff on the October 1, 1976 grand list in each of the municipalities.

In the second case, the plaintiff brought another action against each of the two municipalities by writ, summons and complaint returnable to the Superior Court on February 28, 1978. In this action the plaintiff sought a declaratory judgment declaring personal property of the plaintiff in each of the municipalities to be tax exempt and the continued or prospective taxation of such personal property to be illegal and unconstitutional.

By order of the Superior Court dated July 20, 1981, the two cases were consolidated and were referred to the undersigned state trial referee for hearing and judgment.

As originally filed, the application in the first case was in six counts, the first three counts directed against the city of Hartford and the fourth, fifth and sixth counts against the town of Avon. Briefly stated, each count referred solely to the assessment of personal property of the plaintiff on the list of October 1, 1976, which in Hartford resulted in a tax levy of $23,181.40 and in Avon in a tax levy of $3914.70.

In each count the plaintiff alleged that it is a religious organization, that "the principal or income of the plaintiff is used or appropriated for no other purpose than religious," and that its personal property was exempt from taxation because of the provisions of General Statutes §12-81(12) which provides tax exemption for "[p]ersonal property within the state owned by, or held in trust for, a Connecticut religious organization, whether or not incorporated, if the prinicpal or income is used or appropriated for religious or charitable purposes or both."

The plaintiff also alleged in the third and sixth counts that the assessment and taxation of its property "occasions

excessive governmental entanglement with religion" in violation of the first amendment to the United States constitution, article I of the "Magna Charta," the Preamble to the 1638 Fundamental Orders of Connecticut and article first, §§3 and 20 and article seventh of the Connecticut constitution.

By way of relief related to these six counts, the plaintiff sought a refund of the taxes it had paid to each defendant on the list of October 1, 1976, an order removing the personal property of the plaintiff from the tax lists of both defendants and "such other relief as this court may deem just and appropriate."

To the allegations of these six counts addressed to it, the defendant city of Hartford pleaded a general denial. The town of Avon admitted the allegation that it had levied a tax of $3914.70 on the list of October 1, 1976 on personal property of the plaintiff but as to all the other allegations pleaded a denial or insufficient information to form a belief, leaving the plaintiff to its proof. By way of special defense, Avon pleaded that at no time prior to the commencement of the action had the plaintiff presented or offered to present to any proper official of the town any evidence in support of its claim of tax exempt status and that the plaintiff had failed and refused to use an available administrative remedy.

By an "Amended Complaint" dated June 8, 1981, the plaintiff added two counts to its original complaint in the first case. The two counts were similar in content, the new seventh count being addressed against the defendant city of Hartford and the eighth count addressed against the town of Avon. Each added count incorporated, by reference, most of the paragraphs of the first count of the complaint and then added two paragraphs, similar as to each of the municipalities. The substance of the added allegations was

that the granting to the plaintiff of tax exempt status by the federal government as a religious organization under §§501(c)(3) et seq. of the Internal Revenue Code and the maintenance of that status "definitively established the plaintiff as a 'religious organization' entitled without qualification to a personal property tax exemption under the precise wording of §12-81(12) of the Connecticut General Statutes." It is further alleged that the refusal of the defendant municipality to recognize the plaintiff as a religious organization entitled to tax exempt status is violative of the supremacy clause of the United States constitution and the resulting deprivation of the plaintiff's rights under the first and fourteenth amendments to the United States constitution affords to the plaintiff "an additional cause of action under Title 42 U.S.C. §1983 against the defendant, said statute providing that anyone who, under color of state statute, deprives another of rights, privileges or immunities secured by the constitution and laws of the United States shall be liable to the injured party, the plaintiff herein."

By way of relief under these added counts, the plaintiff claimed a refund of the taxes paid on the October 1, 1976 lists of both defendants, an order removing the property of the plaintiff from the tax list of both defendants, such other relief as the court deems just and appropriate and an award of attorney's fees "pursuant to Title 42 U.S.C. §1983."

By way of answer to the added seventh count, the defendant city of Hartford repeated its general denial of the paragraphs incorporated from the first count, denied the newly added allegations, by way of special defense pleaded that the claims of the plaintiff were barred by the statute of limitations and by way of counterclaim claimed attorney's fees should it prevail on the seventh count.

By way of its answer to the added eighth count, the defendant town of Avon pleaded insufficient information to

form a belief as to the allegations of paragraphs one through thirteen, leaving the plaintiff to its proof, denied the allegations of the newly added two paragraphs numbers fourteen and fifteen, and by way of counterclaim claimed an award of attorney's fees under the provisions of title 42 of the United States Code §1988 in the event that it should prevail in the present action.

In the second case, the plaintiff's amended complaint was in eight counts, the first four directed against the defendant city of Hartford and the last four against the town of Avon. The first eleven paragraphs of each count are in the same language and, briefly summarized, recite that the plaintiff is a nonprofit church corporation which owns and operates television station WHCT, Channel 18, that it is exempt from federal income taxes, from the payment of federal unemployment tax contributions, from the Connecticut unemployment compensation tax, from the Connecticut sales and use tax, and from the Connecticut corporation business tax, all of which exemptions recognize the plaintiff's status as a church. Count one then further alleges that the defendant city of Hartford levied and collected taxes on the plaintiff's personal property in excess of $100,000 since the plaintiff received the Channel 18 station in February, 1972. Count two further alleges that the principal and income of the plaintiff is used or appropriated for no other purpose than religious and that the defendant city of Hartford has wrongfully and illegally denied the plaintiff exempt status on its personal property located in Hartford since under the provisons of General Statutes §12-81(12) that property is exempt from taxation and should have been removed from the city's tax list "immediately upon notice of its being church property." Count three further alleges that if the plaintiff was denied tax exemption of its personal property on the ground that the plaintiff was not a Connecticut religious corporation, denial on that ground unconstitutionally denied the

plaintiff equal protection of the laws. Count four alleges that the plaintiff "qualifies in each and every particular for the exemption of its personal property stated in General Statutes §12-81(12)" and that taxation of the plaintiff church unconstitutionally occasions excessive governmental entanglement with religion.

Counts five through eight are addressed against the town of Avon and recite against that town the same allegations as are directed against the city of Hartford in the first four counts.

By way of relief in the second case, the plaintiff claims (1) a declaratory judgment that the plaintiff's personal property is exempt from taxation pursuant to §12-81(12) of the General Statutes; (2) a declaratory judgment that the defendants' continued or prospective taxation of the plaintiff's personal property is illegal and unconstitutional; and (3) such other relief as the court may deem just and appropriate under the circumstances.

It was on the basis of the multitudinous allegations contained in the sixteen counts of the plaintiff's two complaints, as thus briefly summarized, that the consolidated cases were tried.

Before discussing the merits of the decisive issues raised in the two cases, it is pertinent to note the provisions of General Statutes §12-109 concerning one of the duties of assessors as well as the factual background of the dispute between the parties and certain allegations of fact which have been admitted or proved as well as certain ones which have not been proved.

General Statutes §12-109 provides: "All property exempted from taxation except public highways, streets and bridges, shall be listed, valued and assessed annually by the assessor of each municipality and such valuation shall be

added by the assessor to the grand list in such manner as to be separate from the valuation of property not exempted from taxation."

From the admissions of the parties and from the evidence the following facts are found to have been proved: The plaintiff, Faith Center, Inc., is a religious organization incorporated under the laws of the state of California. It was incorporated there in 1947 under the name of Maple Chapel and its name was changed to Faith Center, Inc. in 1966. In 1971 it applied for a certificate of authority to do business or conduct affairs in Connecticut and in 1972 and again in 1977 it was issued a tax-exemption permit under the provisions of the Connecticut Sales and Use Tax Act.

In 1972 the plaintiff received as a gift the television station WHCT-TV, Channel 18, and since that time has operated that television station. At the relevant times in question, the studios of the station were located at 555 Asylum Avenue in Hartford and its transmitter has been located at 580 Deerfield Avenue in Avon. The Avon personal property which is the subject of the present litigation was located at the transmitter site and the Hartford property was, until 1981, located at the studio in Hartford.

As the parties stipulated, for the period from 1972 through December 31, 1976, the content of the television programs broadcast by Channel 18 as divided between religious and nonreligious programs remained substantially the same. Under the terms of the gift of the station, the plaintiff was required to carry out the existing broadcasting contracts of the station. Its broadcasts included such programs as "Lassie," "Lawrence Welk" and "Bozo the Clown," all of which included commercial advertising.

On November 14, 1972, the plaintiff's general manager of the station testified before the Avon planning and zoning commission that 40 percent of the station's broadcasting

consisted of Christian religious programming and 60 percent was regular commercial programming. The assessor of the town of Avon was present at this hearing and heard this testimony.

In 1972 the plaintiff applied to the assessors of the city of Hartford and of the town of Avon for tax exemption for its personal property in each town. Both assessors denied the application and each placed the plaintiff's personal property located in the respective municipalities on the respective grand lists of taxable property for 1972. The plaintiff did not appeal either the denial of the applications for tax exemption or the amount of the assessment to the board of tax review in either municipality or to the Court of Common Pleas. It paid the personal property taxes levied against it by the city of Hartford on the list of October 1, 1972. In denying the plaintiff's application for tax exemption, the Hartford assessor, on April 25, 1972, wrote: "Channel 18 is a commercial operation and for this reason we feel that an exemption cannot be granted even though it is owned by Faith Center, Inc., a religious organization."

In 1973, the plaintiff applied to the Hartford assessor for tax exemption of its personal property located at its Hartford studio. This application was denied and no appeal was taken either to the board of tax review or to the Court of Common Pleas.

On October 30, 1973, the plaintiff filed with the Hartford assessor a signed "Merchants and Traders Personal Property Schedule" (which contained a statement that the list contained all of the taxable property of the plaintiff as required by General Statutes §12-49). The schedule indicated that the net depreciated value of the plaintiff's personal property was $501,513. The assessor accepted these figures and based his 1973 assessment of $326,000 on them.

No appeal was taken from the assessment and the plaintiff paid 75 percent of the taxes levied on the October 1, 1973 list.

On October 31, 1974, the plaintiff filed the same schedule form showing the net depreciated value of the personal property to be $411,648 and, using the plaintiff's figures, the assessor assessed the personal property at $289,100. No appeal was taken from this assessment.

In 1975, the same schedule was sent to the Hartford assessor by the station's bookkeeper with a letter explaining that the original was sent to the plaintiff's treasurer for his signature. Using the submitted figures, the assessor assessed the plaintiff's personal property at $256,000 and again no appeal was taken.

Similar documents were filed with the Avon assessor in 1974 and 1975, but no Merchants and Traders Personal Property Schedules for October 1, 1976 were filed with either the Hartford or the Avon assessors. The respective municipal assessments on the list of October 1, 1976 were predicated at the same valuation as in 1975 plus, in Hartford, a 10 percent penalty. No appeal was taken to the board of tax review.

At no time did the plaintiff ever furnish to the assessor of either municipality any information as to the extent that the personal property of Channel 18 was used for religious or commercial purposes or as to the use that was made of the receipts from the operation of Channel 18.

On or about March 11, 1977, the Hartford taxes on the list of October 1, 1976 were collected as the result of action taken by the assessor pursuant to the provisions of General Statutes §12-163 providing for the jeopardy collection of taxes.

As the parties stipulated, taxes on the plaintiff's personal property located at Channel 18's transmitter facilities within the town of Avon on the list of October 1, 1976 and for all subsequent years unpaid.

In connection with material facts which the parties alleged and claim to have proved it is also pertinent to note material facts alleged but which are found not to have been proved.

[1] Despite the plaintiff's claim to have proved its repeated affirmative allegations that "[t]he principal or income of the plaintiff is used or appropriated for no other purpose than religious," that allegation was not proved with respect to the subject property. In connection with this allegation it should be noted that at no time from 1972 through the close of the trial did the plaintiff submit to the assessors of the defendant municipalities or to the court any evidence whatsoever concerning the financial operations of Channel 18 or how the income from that operation was used or appropriated. It should also be noted that in determining the taxability of the personal property of the plaintiff used in that operation, inquiry as to the value of the property and the use of the income from it was strictly limited to that operation only.

Another material failure of proof on the part of the plaintiff concerns the allegations contained in paragraph fourteen of the seventh and eighth counts of the June 8, 1981 amended complaint. The seventh count is directed against the defendant city of Hartford and the eighth count against the defendant town of Avon and the language in each count is the same: "The granting to the plaintiff of tax exempt status by the federal government as a religious organization §§501(c)(3) et seq. of the Internal Revenue Code, and the maintenance of such status definitively established the plaintiff as a 'religious organization' entitled without quali-

fication to a personal property tax exemption under the precise wording of §12-81(12) of the Connecticut General Statutes."

[2, 3] There was a complete failure of proof by the plaintiff of this allegation that such a grant of exempt status was ever made or maintained. Parenthetically it may be noted that even if it were proved, any exemption resulting from such a grant would not be "without qualification" since the precise wording of General Statutes §12-81(12) grants that exemption subject to the qualification "*if* the principal or income is used or appropriated for religious or charitable purposes or both." (Emphasis added.) See also §511 of the Internal Revenue Code entitled "Imposition of tax on unrelated business income of charitable, etc., organizations."

Other aspects of the consolidated cases should properly be noted before any discussion of a decision in the cases: The defendants both conceded and it is found that the plaintiff is a "religious organization" as that term is used in General Statutes §12-81(12). It was also conceded and is found that although the plaintiff is a California and not a Connecticut religious organization it is nevertheless entitled to the same benefits of General Statutes §12-81(12) as a Connecticut religious organization would be by virtue of the provisions of the fourteenth amendment to the United States constitution. See *WHYY v. Glassboro,* 393 U.S. 117, 89 S.Ct. 286, 21 L.Ed.2d 242 (1968). The plaintiff was not denied tax exemption because it is not a Connecticut religious organization.

Certain general principles of law govern cases such as the present ones where a party claims that property is exempt from taxation. " 'It is a settled rule of law that statutes which exempt from taxation are to be strictly construed against the party claiming an exemption.' " *Crescent Beach Assn. v. East Lyme,* 170 Conn. 66, 71, 363 A.2d 1045 (1976);

Wiegand v. Heffernan, 170 Conn. 567, 582, 368 A.2d 103 (1976); *Hartford Hospital v. Board of Tax Review,* 158 Conn. 138, 147, 256 A.2d 234 (1969). "Exemptions, no matter how meritorious, are of grace, and must be strictly construed. They embrace only what is strictly within their terms." *Hartford v. Hartford Theological Seminary,* 66 Conn. 475, 482-83, 34 A. 483 (1895); *Woodstock v. The Retreat, Inc.,* 125 Conn. 52, 56, 3 A.2d 232 (1938). As the Supreme Court noted in *Snyder v. Newtown,* 147 Conn. 374, 386, 161 A.2d 770 (1960), appeal dismissed, 365 U.S. 299, 81 S.Ct. 692, 5 L.Ed.2d 688 (1961): "Exemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of others. *Lyman v. Adorno,* 133 Conn. 511, 516, 52 A.2d 702 [1947]. The owners of tax-exempt property in the community derive the same benefits from government as other property owners but pay no property taxes for those benefits."

[4] It is also well settled that the burden of proving entitlement to a claimed tax exemption rests upon the party claiming the exemption. *Curly Construction Co. v. Darien,* 147 Conn. 308, 160 A.2d 751 (1960); *Burritt Mutual Savings Bank v. New Britain,* 146 Conn. 669, 154 A.2d 608 (1959); *Cooley Chevrolet Co. v. West Haven,* 146 Conn. 165, 148 A.2d 327 (1959); *Forman Schools, Inc. v. Litchfield,* 14 Conn.Sup. 444, rev'd on other grounds, 134 Conn. 1, 54 A.2d 710 (1947).

The basic question presented to the court for decision in these cases is — has the plaintiff proved by a fair preponderance of the evidence that on the tax lists of October 1, 1976 in Avon and Hartford the assessors included an assessment of personal property of the plaintiff, a religious organization, which property is exempt from taxation under the provisions of General Statutes §12-81(12)? All of the

pleadings, evidence and arguments of the plaintiff boil down to the assertion that it has proved that it is a religious organization, that as such it is exempt from the payment of many different kinds of taxes and that having proved that it is a religious organization "the exemption involved here in this case should have been automatically granted." The contention of the defendants is that, granting that the plaintiff is a religious organization, its personal property involved here was, in 1976, property used at least in large part in the plaintiff's operation of Channel 18 as a commercial enterprise and, accordingly, pursuant to the express condition contained in §12-81(12), that property was entitled to tax exemption only to the extent that "the principal or income is used or appropriated for religious or charitable purposes or both" — a condition for tax exemption which the plaintiff has failed to prove.

[5] From all the evidence submitted, it is concluded that the contention of the defendants is correct and that the plaintiff has failed to sustain its burden of proving that the subject personal property was wrongfully assessed.

[6] In reaching this conclusion, the court has not overlooked the contentions of the plaintiff that the denial of its claim for exemption deprived it of equal protection of the law or that requiring it to prove its allegations that the subject property was exempt from taxation involved a constitutionally "excessive governmental entanglement with religion" or that the assessment and collection of the subject taxes unconstitutionally "discriminates against the free exercise of the plaintiff Church's religious worship." None of these broad claims has been proved. As the United States Supreme Court observed in the recent case of *United States v. Lee*, 455 U.S. 252, 257, 102 S.Ct. 1051, 1055, 71 L.Ed.2d 127 (1982): "Not all burdens on religion are unconstitutional." That court further stated (p. 260, 102 S.Ct. p. 1056): "Because the broad public interest in maintaining a sound

tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax." See also *Larson v. Valente,* 456 U.S. 228, 102 S.Ct. 1673, 72 L.Ed.2d 33, reh. denied, 457 U.S. 1111, 102 S.Ct. 2916, 73 L.Ed.2d 1323 (1982); *Lemon v. Kurtzman,* 403 U.S. 602, 614, 91 S.Ct. 2105, 29 L.Ed.2d 745, reh. denied, 404 U.S. 876, 92 S.Ct. 24, 30 L.Ed.2d 123 (1971); *Walz v. Tax Commission of City of New York,* 397 U.S. 664, 674, 90 S.Ct. 1409, 1414, 25 L.Ed.2d 697 (1970).

[7] It also follows from the court's conclusion that the plaintiff has failed to prove that the subject personal property was wrongfully assessed on the list of October 1, 1976, that the plaintiff is not entitled to its requested declaratory judgments with respect to any continued or prospective tax assessments beyond those made on the list of October 1, 1976 even if such declaratory judgments could be found to be appropriate. It cannot be assumed that the same factual situation has existed or will exist at the time of any tax lists subsequent to that of October 1, 1976, to which year the evidence in these cases was limited. It also cannot be assumed that information supplied by the plaintiff or discovered by the assessors relative to use of the subject property has not or will not present different situations in tax years subsequent to October 1, 1976. The plaintiff clearly has had and has adequate remedies available to pursue should its property be wrongfully assessed in other tax years. See General Statutes §§12-111, 12-118 and 12-119, and *Chamber of Commerce of Greater Waterbury, Inc. v. Murphy,* 179 Conn. 712, 721, 427 A.2d 866 (1980); *Lerner Shops of Connecticut, Inc. v. Waterbury,* 151 Conn. 79, 92, 193 A.2d 472 (1963). It is to be noted that the plaintiff took no appeals pursuant to General Statutes §§12-111 or 12-119 except with reference to the assessments on the list of October 1, 1976.

[8] Quite obviously, in light of the conclusion that the plaintiff has failed to prove that the subject personal property was wrongfully assessed, it follows that the plaintiff has failed to prove any violation of the plaintiff's civil rights as alleged in counts seven and eight in the first case and is clearly not entitled to attorney's fees pursuant to the provisions of title 42 U.S.C. §"1983" as claimed, or under §1988 to which the plaintiff probably intended to refer.

It may well be doubted whether causes of action alleged by the plaintiff do in fact give rise to a cause of action which, under the provisions of title 42 U.S.C. §1983, would entitle the prevailing party in the court's discretion to an award of counsel fees but it is unnecessary to decide that question. Since the plaintiff is not the prevailing party, it is not entitled to any such award and, assuming that the federal act is applicable, in the exercise of discretion the respective claims of all counsel to an award of counsel fees are denied.

By way of summary: In the first case, in counts one through eight, judgment may enter for the defendants, with costs, but no award of counsel fees is made to any party on the complaint or on the counterclaims. In the second case, judgment may enter for the defendants on each of the counts, with costs.

APPENDIX C

Order Extending Time to File Petition for Writ of Certiorari

In the Supreme Court

OF THE

United States

No. A-1065

FAITH CENTER, INC.
Petitioner,

v.

CITY OF HARTFORD, et al.

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner(s).

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 14, 1984.

/s/ Thurgood Marshall

Associate Justice of the Supreme Court of the United States

Dated this 3rd
day of July, 1984.

APPENDIX D

Pertinent Constitutional Amendments and Federal Law

AMENDMENT [I]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV. — CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

APPENDIX E

Connecticut Tax Exemption
Form M-3

STATE OF CONNECTICUT

Office of Policy and Management

MARGARET MARY CURTIN
UNDER SECRETARY
INTERGOVERNMENTAL RELATIONS DIVISION

July 17, 1981

TO THE BOARDS OF ASSESSORS OF EACH OF THE 169 TOWNS, CONSOLIDATED TOWNS AND CITIES, AND CONSOLIDATED TOWN AND BOROUGH:

Enclosed are copies of a yellow form headed "Tax Exempt Return" *to be used by each scientific, educational, literary, historical, charitable, agricultural, horticultural, and private secular cemetery organization* claiming an exemption from taxation on property located in your municipality under the provisions of subdivisions seven, ten and eleven of section 12-81 and sections 12-87, 12-88 and 12-89 of the Connecticut General Statutes.

This Tax Exempt Return Form has been substantially revised and is a combined Quadrennial and Original Tax Exempt report replacing Form M-22. This new form is to be used for the year 1981, by the organizations listed above, for their Quadrennial Report, by checking the box labeled Quadrennial Report. This form will also be used as the Original Report for those organizations requesting a property report tax exemption for the first time during the years 1982, 1983, and 1984, during which years, the box labeled Original Report will be checked.

It should be emphasized that *all* of such organizations owning tax exempt property in your municipality are required to file proper and timely returns with you this year. This is true whether any such organization may or may not have filed a tax exempt report in 1980 or prior thereto. The law requires that a tax exempt report be filed

only once in every *four* years (in 1965 and quadrennially thereafter) *provided no new property shall have been acquired between the quadrennial periods of reporting.* The law, however, has made provision for a supplemental report during any one of the years between the regular quadrennial years of reporting in any case where any such organization shall have acquired any property for which tax exemption is claimed. This is in order to permit the assessors to become fully acquainted with any additions in ownership since the last regular report.

Care should be exercised by the assessors to notify all scientific, educational, literary, historical, charitable, agricultural, horticultural, and private secular cemetery organizations exempt from taxation, or claiming exemption from taxation under the provisions of sections 12-81, 12-87, 12-88 and 12-89 of the Connecticut General Statutes, that this is the year in which a *full and complete* quadrennial tax exempt report must be *timely* made to the assessors of each municipality in which any of the property belonging to each such organization claimed to be exempt from taxation is located. It will be observed that *property otherwise exempt is subject to taxation if a tax exempt report is not filed on or before November 1.*

Please note that Hospital Societies or Corporations, and Sanatoriums, exempt pursuant to Section 12-81 (16) are *NOT* required to file a quadrennial report this year, but must file one in 1983.

It is suggested that two copies of the tax exempt report form enclosed (and such additional copies as may be required) be given to each applicable organization. An

extra supply of these tax exempt forms will be sent to you if you will advise me of your needs. Should you have any questions, I would be pleased to answer them.

Very truly yours,

DONALD W. ZIMBOUSKI
Chief, Municipal Section
Tel. #566-8170

DWZ/jly
Enclosure
M-3A

TAX EXEMPT RETURN

STATE OF CONNECTICUT

This is a Tax Exempt Return of Charitable and of certain Other Organizations to Assessors, as required by Sections 12-81, and 12-87 of the Connecticut General Statutes, and as prescribed by the Secretary of the Office of Policy and Management. One of the requirements for tax exemption under Sections 12-81, and 12-87, C.G.S., is that a Scientific, Educational, Literary, Historical, or Charitable Institution, an Agricultural or Horticultural Society, a Cemetery Organization, or a Hospital Society*, or Corporation* or Sanatorium* must file a return every four years with the board of assessors in each town in which exempt property owned by it on the assessment day is situated. Such a return, showing all such tax exempt property, must be made upon this form by any such institution, society, organization, corporation* or sanatorium* and must be filed with each board of assessors on or before November 1, or if such day is a Sunday, on next business day, with the Assessor or Board of Assessors.

*See Section 12-81, subsection (16), as amended, C.G.S., for the filing of an exempt return by any Hospital Society or Corporation or Sanatorium.

Check Type of Declaration: ☐ Original Report
☐ Quadrennial Report

To The Assessors of the town of: Return No. From (Name of organization)
Mailing Address (No. & Street, Town, State, Zip Code)

1. What are the purposes of this Organization (if incorporated, Quote briefly from Charter) Except for unincorporated cemetery societies, Item 2 applies to every tax exempt organization filing a report.

2. Date Incorporated Under Connecticut Law
Organization Was Incorporated Under ☐ General Law ☐ Special Law Capital Stock ☐ With Capital Stock ☐ Without Capital Stock Clause Giving Special Tax Exemption ☐ With Clause ☐ Without Clause If With Capital Stock: Total No. of Shares Total capital stock issued and outstanding on assessment day:

3. If not an agricultural, horticultural or cemetery society, is the gross income of such corporation entirely devoted to scientific, educational, literary, historical, charitable, or hospital purposes or to two or more of such purposes? ☐ Yes ☐ No

4. During The Last Fiscal Year Ended What Was Gross Income of Organization? $ What part of such income was used for other than its main purposes?

5. During Such Fiscal Year Ended What Were Gross Expenditures? $ What part of such expenditures were devoted to other than main purposes?

6. Agricultural, Horticultural Societies Only: If such corporation is receiving from the State reimbursement in part for cash premiums given at an agricultural or horticultural exhibition held by it in the State, enter the date last reimbursement was received:

7. Cemetery Organization Only: Is its gross income entirely devoted to cemetery purposes: ☐ Yes ☐ No

8. Is any officer, member, or employee of such organization receiving, or may he at any future time (even in event of its dissolution) receive any pecuniary profit from its operations, except reasonable compensation for services in effect-

ing one or more of its purposes, or as a proper beneficiary of its strictly charitable purposes? ☐Yes ☐No If Answer Above Is "Yes", Show Here, The Manner By Which Such Individual Pecuniary Profit May Be Received
What Would Be The Disposition Of Incidental Profit Which Such Organization Might Make? Does Its Charter Contain Any Provisions Relative Thereto?
What Would Become Of The Property Of Such Organization In The Event Of Its Dissolution?
Does Its Charter Contain Any Provisions Relative Thereto?
Has The Organization Received An I.R.S. Exemption In Accordance With Section 501(c)? If Granted, Attach Copy) ☐ Yes ☐No

9. On assessment day in the year of the return, specify book and market values of Tangible Personal Property of such organization Book Value $
Market Value $ Is all tangible personal property devoted to carrying out purposes for which exemption is claimed? (If not, list items on reverse side) ☐ Yes ☐ No

10. On October 1st of this year, what was value of the Real Estate of such organization based on? Book Value $ Market Value $

11. Describe Real Estate Mentioned In Item 10, Giving Number of Parcels, Location, Area and Uses (Use reverse side if necessary)

12. Is All The Real Estate Being Used Exclusively For Purposes Of The Organization As Stated In Item No. 1? ☐ Yes ☐No If answer to item 12, above, is "No", specify below, what the market value of real estate shown in item 10 above, represents. (a) Real estate being used entirely for other purposes $ (b) Real estate used in part for one or more such purposes and in part for other purposes $ (c) Real estate not used for any purpose $

13. Does the reporting organization own any real estate for which no income is derived on the land of which suitable buildings are in the progress of construction, which real estate is exempt from taxation under the first sentence of Section 12-88 of the general statutes? ☐ Yes ☐ No If answer to item 13, above, is Yes, what is market value as of assessment day in year of this return of such tax-exempt real estate? $

I do hereby declare under oath that, according to the best of my knowledge, remembrance and belief, this report is true. Date Signed (Treasurer or other Chief financial officer of corporation X Title

Subscribed and Sworn to before me: Date Signed (Justice of Peace, Notary, Assessor-Town Clerk, Comm-Superior Court X

Additional remarks: For additional information, please refer to the Section of the Connecticut General Statutes listed. Agricultural Societies, 12-81(10); Cemetery Use 12-81(11); Charitable Organizations 12-81(7); Determination of Exemption 12-89; Education Organizations 12-81(7); Historical Organizations 12-81(7); Horticultural Organizations 12-81(10); Hospitals 12-81(16) — Must file in 1983 and quadrennially thereafter; Literary Organizations 12-81(7); Partially Exempt Property 12-88; Sanatoriums 12-81(16) — Must file in 1983 and quadrennially thereafter; Scientific Organizations 12-81(7).